O. Tr. of Pty 1/43

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File No.

Legal Department

A BRANCH

Subject:—

Opinions Under the

Transfer of Property Act

P 11/6

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116/7-1-43

Submitted with reference tothe note of the D.S., P.W.D. dated 6-1-43.

2 Under section 108(q) of the Transfer of Property Act, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. Under section 111(h) a lease of immoveable property determines on the expiration of a notice todetermine the lease, or to quit, or if intention to quit, the property leased, duly given by one party to the other. Under these provisions at the expiration of the term, whether it terminates by notice or efflux of time, the tenant or lessee is bound to put the lessor in vacant possession of the property. If the tenant fails to restore possession on determination of the lease, he will be liable in damage for the breach of the obligation. Under section 116, a tenant holding over as a tenant from month to month would be entitled to notice to quit of fifteen days with the end of each month of the tenancy. If the tenant fails to restore the vacant possession of the land after notice to qu't is duly givenin pursuance of the terms of the lease, the only course open to the landlord is to file a suit for eviction. The view expressed by the D.S., P.W. appears to be correct. The papers may be "Seen and return -d".

Sd./..... 7-1

S.A.S.

Please see section 79 A read with 53(4) of the Land Revenue Code. Will it be possible toinsert a conditi in the lease for summary eviction after the termination of lease ? Pl. examine.

Sd./R.T.K. 5-1

Mr. Bhangara.

Resubmitted.

If the lessee remains inpossession after the deter-

tenant on sufferenco (146 I.C.762). A tenancy on sufferance does not create the relationship of land-lord and tenant and no notice is necessary before evicting a tenant on sufference(13 I.C. 59). If the tenant holds over against the wish of the land-lord he is liable for damages as a trespasser (155 I.C. 367), after the determination of the lease, the occupation of the porperty by the tenant will be unauthorised, and if provision is made in the agreement or lease, for summary eviction in case of failure of the tenant to vacate, it appears that action can be taken for sumary eviction under section 79A of the Bom. L.R.Code.

R.L.A. I don't think the application of sec, 79A of the B.L.R. Code is quite apt in present case

Reply as suggested.

Id./P.N.M. 28-1

U.D.-to P.W.D. No. 151 dated 30th Jan. 1943

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Assuming that the notice sent by post was received by Mr. P.M.Kanga on 2nd December 1942 it would be deemed to have been tendered to him that day. Consequently the notice being at least one day short of the proper time to terminate the lease would be invalid and Government would be liable to pay rent for the month of January as claimed by Mr. P.M.Kanga.

Id./..... 26/2

Remembrancer of Legal Affairs.

U.O. to P.D.(Supply)No. 1495 dated 27th February 1943.

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Clause(h) of section 108 of the Transfer of Property Act, 1882, permits the removal of fixtures by the lessee. The fact that the lessor although agreeing orally to the removal of those fixtures, refuses to pu his assent on paper, will not affect the lessees statutory right of removal, but as a measure of prudenc it would be advisable to inform the lessor inwriting that the fixtures will be removed, if they are not purchased.

Id./..... 29/3

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll)No. 2325, dated the 30th March 1943.

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Submitted.

2 On 7th December 1942 the P.W.D. had published certain revised conditions for grant of Electric Licensee (copy put up at pp. 1-3) para 7 of which provides "that should a continuous supply of energy of such a nature and amount and at a point suitable to the licensee be offered by and person or by the Government willing to enterinto an agreement with the licensee for such bulk supply of energy for a period of not less seven years at such a charge aswould be in the opinion of the Government cheaper than the tota costs of generating a like amount of energy by the licensee's own power plant, then the licnesee shall forthwith commence negotiations for the supply offered and shall, thereafter, enter into an agreement for the supply upon such terms and conditions as may be mutually agreed, or failing such agreement within a period of six months, as may be decided by arbitration. With reference to this Messrs. Gagrat and Co., Solicitors have addressed a letter to the P.W.D. on behalf of an unknown client inquiring---

(1) whether the bulk licensee will be bound to any definite period for giving such supply in case the distributing licensee agrees to take supply at cheaper rates from the bulk licensee.

(2) secondly whether the bulk licensee after the expiry of the period would be entitled to raise his rents and /or minimum guarantee.

(3) thirdly whether the arbitration referred to is arbitration under the provision of the Indian Arbitration Act.

P.W.D. has drafted a reply to these querries which is at p. 10 of the file. E.L.A. is requested to see whether it is in order.

3 Reply to question No. 1 that all questions regarding the period of a reement, discontinuance of

supply will be embodied in the agreement appears to be proper.

Question No. 2 was fully discussed in an opinion of R.L.A.No. 4663 dated the 22nd May 1941(slipped I below). It is decided that if the bulk licensee agrees to supply but fixes fresh charges he can do so within the prescribed limits of section 22 of 23 of the Ind. Elc. Act because after the expiry of the period of agreement between the bulk licensee and the distributing licensee and the distributing licennee their p sition is reduced to ordinary licensee and a consumer respectively. If the bulk licensee refuses at all to supply energy the dispute would be settled by arbitration under clause IX(i)(d) of the Sch. to the Elc. Act. Reply to this question therefore though not in details does not appear to be improper.

As regards question No. 3; the rights and liabilities of the bulk licensee and the distributing licensee are discussed in clause IX of the Sch. to the Ind. Elc.Act. Cla.(i)(d) of which provides for an arbitration in case of disputes. The mode of constituting such an arbitration is given under sec. 52 of the Ind. Elc. Act. The reply to the third question is also in order.

P.W.D, may therefore be informed that the draft is in order.

Sd./C.T.Dighe 27/3

S.A.S.

Please see sub-clauses(b)(c) and (d) of clause IX of the Schedule to the I.E.Act. The reply proposed by the P.W.D. at pp. 6 and 7 is consistent with the aforesaid sub-clauses (b)(c) and (d).

P.W.D. may be informed that the draft reply is in order.

A.L.R. Id./R.S.H. 2.4 Id./R.T.K. 1-4
R.L.A. Id./P.N.M. 4/4

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The draft reply is in order.

Id./..... 12/4

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 2665, dated 13th April 1943.

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4 Copies.

Submitted.

2. One Mr. A.B.Bardi had leased a bugalow with sites appurtenant thereto to the Government on 1-12-1940 for the use of the Dist. Judge, Satara for a period of 3 years on a monthly rent of Rs. 80/- The District Judge, Satara in his lett r No. 1,500 of 8-6-1943, states that the said property has been sold by Bardi to one Kamalka Mahadeo Gite, minor by his guardian Mahadeo Krishnaji Git under a sale deed dated 31st December 1942, subject to the terms of the said lease. The Vendor Mr. Bardi has requested the Government to continue to pay the rent to the purchaser , and the purchaser has also made an applic tion to the Govt. that the rent due from 1st January 1943 as well as rent that will become due hereafter, may be paid to him. The P.W.D. has requested the D.L.A. to advise whether it would be legal to pay the [redacted] rent to the purchaser.

3 It has been stated in theterms of the lease (please see page 83 portion marked 'B') that the expression 'Lessor' shall be deemed to include, the assigns of the Lessor. The purchaser of the property being the assignee the 'lessee' under the terms of the lease, is bound to pay the rent,(pl. see Covenant Government No. 1 of the lessee on page 84). Since the sale deed in favour of the purchaser, has been executed subject to the terms of the lease(pl. vide page 93 portion marked 'A') there is no legal objecton to pay the rent to the purchaser. Reply may be "There is no legal objection to comply with the request of the purchaser, and to pay the rentto him from 1st January 1943, till the expiry of the lease

Id./..... 2/7
S.A.S.

Papers may be seen & returned/A
Id./.... 2/7
A.L.R. 'A'
Id./ R.S.H. 5/7
R.L.A. Id./..... 6/7

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Under the terms of the lease the lessors are bound to carry out the repairs in question. Under clause (f) of section 108 of the Transfer of Property Act, 1882, Government within a reasonable timeafter notice may make the repairs itself and deduct the amount of such repairs ~~xxx~~ with interest from the rent. The Ø covenant in the lease to pay rent without deduction need not hinder Government from exercising its right under that clause. See Graham vs. Colonial Government of British Guiana, 12 Calcutta Law Journal 351. Apparently a notice has already been served in this case. Since it is not on record, I cannot say whether it is sufficient for the purpose of section 108(f) of the above Act. If it is not, another notice should be served. The Electric Installation may be tested in the manner suggested by G.D.

Id./..... 31/8

Remembrancer of Legal Affairs.

U.R. to G.D.No. 5896 dated the 1st September 1943.

SMR 7-7-56
4 Copies.

R.I.No. 9434/27-9-43

Submitted.

Please see A.D.C.S.(G)'s office notes upon pp.1 -3 ante. That office has not clearly stated the facts of the case. In the absence of a clear statement of facts it very difficult for the R.L.A. to express any definite opi ion in the matter. Moreover questions like these such as payment of rent of premises leased to Govt. on monthly tenancy basis have been answered by the R.L.A. on reference by that office more then one occasion The reference is made by the Asstt. Director of Civil Supply(Grain Shops), who is not entitled to make such references to the R.L.A. under para. 104 of the Secretariat Instructions. His attention may be invited to para. 104 of the Secretariat Instructions and the papers may be returned to him.

Id./P.S.N. 29/9

S.A.S. Please see A at p. 2 ante.

Reply may be:-

Government is liable to pay rent for the month of October 1942.

Id./R.T.K. 30-9

A.L.R. Id. R.S.H. 30/9

R.L.A. Id. P.N.M. 6/10

A.L.R.(before issue) Id. R.T.K. 7/10

P.A.(" ") Id. 7/10

Office of the R.L.A.

Government is liable to pay rent for the month of October 1942.

Id./P.N.M. 6/10
Remembrancer of Legal Affairs.

U.R. to A.D.C.S.(G.S.), No. 6727, dated 7th October 1943.

SMR 7-7-56, 4 Copies.